

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

May 7, 2015

This meeting was called to order at 6:00 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Russell Moore, Scott Spendlove, William Whetstone, and Necia Christensen

Those Absent:

Sandy Naegle

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman, Brock Anderson, and Nichole Camac

WEST VALLEY CITY LEGAL DEPARTMENT

N/A

AUDIENCE:

Approximately six (6) persons were in the audience.

NON CONFORMING USE

B-3-2015
Winder Farms NCU Expansion
4270 S 4400 W
A Zone

REQUEST:

Don Lindhardt, representing Winder Farms, has filed a request for an expansion of a non-conforming use. This request is for property located at 4270 S 4400 W.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends Low Density Residential Use.

The property is currently zoned Agriculture, which does not allow for manufacturing-type uses. The West Valley City Zoning Administrator has made a legal non-conforming use determination for the property, ZAD 20150007.

The current owners have submitted an application to add two cold storage structures next to an existing packaging and cold storage building. The two structures would not be physically connected to the existing building, but would share an existing loading dock. The additional structures will provide added storage space to facilitate Winder Farms' growing operation.

The property surrounding Winder Farms is the Valley View Memorial Park. The proposed coolers will be setback at least 40' from the property lines. According to the applicant the coolers generate some noise, but it is very minimal. There are large, mature trees that border the Winder Farms Facility and the cemetery. The units will be about 350' from the existing residential homes to the south.

The Board may allow a modification to an existing non-conforming use provided that the change is in harmony with the surrounding neighborhood. Staff believes that the applicant's request to modify the existing non-conforming use by adding two cold storage structures would not impose any unreasonable impact or burden upon land located in the vicinity. The Board may also attach reasonable conditions in order to assure neighborhood compatibility. The applicant will be required to obtain a building permit for the structures, which will necessitate a review of the expanded area by Public Works, Fire and Building Inspections.

ORDINANCE SUMMARY:

Section 7-18-106(6) of the West Valley City Land Use Development and Management Act reads:

- (6) Alterations of Modifications to Nonconforming Use. A use which has been declared nonconforming shall not be enlarged or moved except as provided in this Section. The Board, after a public hearing, may allow an enlargement or modification provided the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not impose any unreasonable impact or burden upon land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility.

Brock Anderson presented the application.

Discussion: Scott Spendlove asked where the building is in relation to the store that recently closed down. Brock replied that the old store is to the north. Mr. Spendlove asked if the use has been continuous. Brock replied yes and indicated that the Zoning Administrator has determined that the use is legal non-conforming. He indicated that this is simply an expansion of the use. Steve Lehman agreed and added that the request is a modification to a non-conforming use but will need to meet current codes.

Applicant:

Don Lindhardt
2072 W 3300 S
West Valley City, UT

Mr. Lindhardt

Mr. Lindhardt stated that he understands the concern for noise. He indicated that a noise survey was conducted and it was determined that there will be no additional noise that will impact neighbors to the south. Mr. Lindhardt provided a copy of the sound study to the Board members and explained that the new units will only increase sound output by 3 to 4 decibels. He described various points that sound was measured on the property and concluded that everything is within normal parameters and no additional sound would likely be noticed by residents.

William Whetstone asked how many units exist on the building. Mr. Lindhardt replied 7 units. Mr. Whetstone asked if there are times that multiple units are running. Mr. Lindhardt replied yes and indicated that the sound survey was taken at a time when most units were on.

Mr. Lindhardt stated the new units are not visually obtrusive and will not be seen by the public. Mr. Whetstone commented that parking will be lost and questioned if the spaces will need to be replaced. Mr. Lindhardt replied that the store is now closed which provides a great deal more parking and while the new units will take up 5 spaces, this will not be a concern.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval.

Mr. Moore seconded the motion.

Discussion: Necia Christensen stated that she lives near this area and has never had an issue with noise.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

Motion Carries - B-3-2015– Unanimous Vote

VARIANCES

B-1-2015

This item has been withdrawn from the agenda at the request of the applicant.

B-2-2015

Bullock Variance

3777 South 3200 West

R-1-8 Zone

REQUEST:

Mr. Nathan McAllister , is requesting a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage of a lot in the R-1-8 zone be 80 feet. The applicant is requesting a frontage variance of 5 feet for the purpose of subdividing the existing property to create two building lots.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property is known as parcel 15-33-153-035. This property is not part of a formally platted subdivision and is vacant at the present time. County records indicate that the property is approximately .45 acres in size.
- ☐ The applicant approached staff about the possibility of dividing the subject property into two lots. Staff explained that the R-1-8 zone requires an 80-foot frontage and that the existing width of the lot would be shy 5 feet of meeting this requirement. Since the

property is only 75 feet wide, a variance would be needed in order to subdivide the property as intended.

- ☐ Staff asked the applicant at what time did the property come into its current configuration. According to research by Mr. McAllister, the property was created in 1993. Staff researched older ordinances and found that at the time the property was divided, the frontage requirement was 75 feet. So, although the property was illegally divided, the frontage requirement at the time of its creation did meet City ordinances.
- ☐ Staff explained the variance criteria and that the Board of Adjustment would need to evaluate the criteria in relation to the specifics of the property. Mr. McAllister believes that the variance criteria can be satisfied and that two new homes in this area would be beneficial to the community and has included answers to the variance criteria.
- ☐ The property has a width of 75 feet and a depth of approximately 297 feet. The applicant explained that if the variance was granted, the property could yield two lots with a lot size of 11,137 square feet. This number is well in excess of the required 8,000 square feet in the R-1-8 zone.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a minor subdivision application. The new single family dwellings would be required to meet all provisions of the City's existing housing standards.

☐ **ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Code requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) There is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Steve Lehman presented the application.

Discussion: The Board of Adjustment had no questions of staff.

Applicant

Nathan McAllister

1940 W 4700 S

Taylorsville, UT 84129

Nathan McAllister

Nathan McAllister stated that the Bullocks would like to move the existing property line to the rear of the existing garage. He indicated that they would like to make the two southern parcels that they own as equal as possible and would eventually like to have 3 buildable lots.

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. McAllister stated that literally enforcing the zoning requirement on this lot will prevent the owner from subdividing. He indicated that the two lots will each be 75' wide by approximately 150' deep, with approximate square footages of 11,000 sf each, well in excess of the 8000 sf required by R-1-8 zoning. 75' is 94% of 80'. It would therefore create an unreasonable hardship enforcing this frontage requirement because the width requirement is nearly met and the overall size requirement is more than met. Mr. McAllister indicated that many of the nearby lots in the neighborhood are narrower than the proposed new lots would be, so it seems unreasonable not to allow this variance to match what is common in the neighborhood.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. McAllister stated that the only currently known special circumstance that applies is that this lot is 75' wide and there is not additional land available for sale currently to make it 80' wide.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Mr. McAllister stated that granting the variance is essential to allow the current or future owners to develop two lots on this parcel that in all other respects meet the intent and requirements of R-1-8 zoning.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Mr. McAllister stated that granting the variance will not affect the general plan at all, nor will it be contrary to the public interest because no zoning or use change is requested. Once the variance is granted the applicant intends to develop the lots and the houses on them to be compliant with WVC's zoning and building codes. He indicated that the addition of the new homes to the neighborhood should help raise property values, benefitting the neighborhood.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mr. McAllister stated that by granting the variance requested the current and future owners will secure the right to build R-1-8 size lots on the property, meeting the spirit of the zoning ordinance.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Whetstone moved for approval.

Mr. Moore seconded the motion.

Discussion: Necia Christensen stated she looked at surrounding property in the area and noticed a variety of frontages. She indicated that the frontage requirement was acceptable under previous requirements and it seems reasonable that the applicant should be allowed to subdivide the property. Russell Moore agreed and stated that he knows the Bullock family. He indicated that the property was divided evenly in the 1990's with no concern or problem. Scott Spendlove asked if the property was divided legally in the 1990's. Steve replied that a formal subdivision was never recorded with the City which can be a common error for people. Steve indicated that although the property was illegally divided, the frontage of 75 feet did meet City ordinances at the time. He indicated that granting this variance will allow a formal subdivision to be completed. William Whetstone asked if the use could be grandfathered since it did meet requirements in the 1990's. Steve replied that there is no structure on the property and since it is vacant it will need formal subdivision approval.

Mr. Spendlove stated that he doesn't feel the application meets the criteria. He indicated

that it is unfortunate the property owners didn't go through the appropriate process in the 1990's but there are many long and narrow lots in the area. He stated that a home can still be built on the property and he doesn't feel there is a unique circumstance. Ms. Christensen disagreed and indicated that the size makes it hard to maintain as a single residential lot. She indicated that the property met the requirements for the zone in the 1990's when it was divided.

The Board of Adjustment discussed the various criteria. The Board agreed that the applicant meets the first item. Mr. Spendlove stated that he doesn't feel the second requirement is met because the lot is similar to those in the area. Ms. Christensen stated that the 75 feet was legal when the lot was divided in the 1990's. Mr. Moore agreed and added that the only way to bring the property into compliance is to grant the variance. Ms. Christensen stated the third criteria is met since everyone should be allowed to develop their R-1-8 property. Mr. Whetstone agreed and indicated that the fourth condition is also met since the General Plan will not be impacted or changed. Ms. Christensen concluded that the final requirement is also met because the spirit of the ordinance is met since they simply want to develop the land into R-1-8 lots.

Mr. Moore indicated that all lots in the area were created under County jurisdiction in the 1970's. He stated that each of the lots are similar in size. Mr. Moore stated that he sees this as an enhancement to the area because it will allow the land to be developed. Mr. Spendlove asked if the property was legally divided in the 1990's. Steve replied that after the application was accepted staff found the original deed and compared it to the City's record in the early 1990's and the frontage was 75 feet which was legal in the City's ordinances at that time. He added that the new properties will meet or exceed all area requirements of the R-1-8 zone

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

Motion Carries - B-2-2015-- Unanimous Vote

B-4-2015

Albert Variance

3681 South 5600 West

R-1-8 Zone

REQUEST:

Mr. Fred Albert, has filed a request with the West Valley City Board of Adjustment seeking three variances from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage in the R-1-8 zone be 80 feet, that the non-garage side yard setback be 8 feet and that

the front setback be 25 feet. The applicant is seeking variances of 20 feet, 3 feet and 22 feet respectively.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property consists of two parcels. The parcel with the single family dwelling is known as 14-36-151-030. The parcel with the out-building is known as 14-36-151-003. These parcels are not located within any type of formal subdivision. According to Salt Lake County records, the single family dwelling was constructed in 1962. The out-building was issued a building permit in August 1995.
 - ☐ The property is bordered on the north by a recently completed senior community, the east by existing residential zoned A, and the south by a ball field owned by the LDS Church. The property sits immediately to the east of 5600 West.
 - ☐ Mr. Albert approached staff about the possibility of subdividing the existing parcels to create 3 new lots. The new lots would be located to the east of the existing structures. He explained that the driving force behind the request is that his children would like to move back home. Three new single family dwellings would be constructed if the variance is approved.
 - ☐ The two existing parcels total 1.85 acres. As staff evaluated the configuration of the property, and lot size requirements for a flag lot subdivision, it was determined that a subdivision can work. However, it would necessitate a number of variances due to the location of the existing structures and their relationship with what will be a new driveway. The driveway will establish new property lines.
 - ☐ The subdivision would require a 24-foot driveway coming off of 5600 West to access the new lots to the east. The driveway would be positioned between the existing home and the existing out-building. The setback between the driveway and home would be 5 feet and from the driveway to the out-building would be 3 feet. The driveway will also reduce the existing frontage from 66 feet to 60 feet for the lot with the existing dwelling. Staff would like to address each of the variances as they would apply to a new subdivision.
1. A frontage variance for parcel 14-36-151-030. At the present time, the frontage of this parcel is 66 feet. If the property were to be subdivided, the new driveway providing access to the rear portion of the property would leave this parcel with 60 feet of frontage. Thus a variance of 20 feet. Although the frontage of the property does not currently meet requirements of the R-1-8 zone, the frontage requirement is still based on that which is found in the R-1-8 zone.

2. A side yard setback variance for parcel 14-36-151-030. The new driveway would be positioned 5 feet from the existing dwelling. The minimum setback from home to property line is 8 feet. Thus a variance request of 3 feet.
3. A front setback variance for parcel 14-36-151-003. The future subdivision will create a lot that will also contain the existing out-building. The future home will likely face south, thus creating a front setback along the private driveway. Because the out-building would be located within the setback area, a variance of 22 feet would be needed.

Staff has reviewed the variance criteria with Mr. Albert. He believes that due to development on all sides of his property, little option exists for him to develop the larger field in the back. Staff did discuss whether the out-building could be relocated. Mr. Albert explained that the size and cost of moving it would be prohibitive. Mr. Albert further explained that the out-building sits on its own piece of property, which current ordinances do not allow. If the variance is granted, the building would be part of a platted lot with a single family dwelling, bringing it into compliance with current City ordinances.

ORDINANCE SUMMARY:

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires an 80-foot frontage, 8 foot side yard setback, and 25 foot front yard setback.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Steve Lehman presented the application.

Discussion: Scott Spendlove clarified that the site plan presented by the applicant is what is specifically being approved. Steve replied yes.

Applicant

Fred Albert
3681 S 5600 W

Fred Albert

Fred Albert stated that he has owned this property since the 1990's. He indicated that his children would like to build homes on the property now as well. Mr. Albert read the letter he provided.

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Albert stated that the purpose for the City's zoning ordinances is to promote health, safety and welfare of the citizens. The approval of the variances will not negatively impact the purpose noted above. He indicated that the unreasonable hardship is that he would have a large piece of property that cannot be divided. The limited frontage of both properties makes future development of this property impractical.

- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Albert stated this property is approximately 610 feet deep with existing residential uses on all sides. The only access to this property is from 5600 West. The width of the property is only 132 feet. He indicated that there is one other property in the general area that has similar characteristics, but it has a stub street that connects to it allowing future development options. Mr. Albert stated that the back of his property is landlocked. There is also an elevation difference with this property being about 3 feet higher than the property to the north. Running a road along the north boundary is not an option due to retaining and storm water concerns.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Mr. Albert stated that his substantial property right is that he be allowed to develop this property with new single family homes. Lots will be very large and homes will be custom built. This will add value to the area and will provide a nice quiet living environment. Mr. Albert stated that the detached structure becomes an accessory structure to the new lot he will be building his home on. Others in the area have a detached garages.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Mr. Albert stated that granting the variance actually supports the general plan by creating large lots. It will also bring the property more into compliance with City ordinances because the out-building will be on a lot with a single family dwelling as opposed to a non-residential building on its own parcel. He stated that the setback distances are a substantial distance off of 5600 West and there will be no visual impact to the public interest.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mr. Albert stated that the spirit of the zoning ordinance is observed because he is requesting a variance that will allow him to develop his property as others have done in the surrounding area.

Jay Snelgrove

Mr. Snelgrove stated that he is a neighbor and has no objection to the application. He indicated that he feels this will help improve the neighborhood.

Discussion: Mr. Whetstone asked if the driveway to the south will impact any future development. Steve replied that the LDS Church owns the property directly south and uses the space recreationally. He indicated that the City doesn't see this changing in the future. Mr. Whetstone asked if fire trucks will be able to access the new homes at the rear of the property. Steve replied that the minimum width is 20 feet and this driveway is proposed to be 24 feet. He indicated that there will likely be some time of hammerhead turn around for the fire trucks and added that a fire hydrant will be required.

Russell Moore asked how the outbuilding was approved without being on the same parcel as the existing home. Steve replied that it was reviewed and denied by the Board of Adjustment but was then granted a permit later. He indicated that he is unsure how it was approved but a permit was issued and the outbuilding was inspected. Allowing this variance would allow the City to rectify this issue. Steve mentioned that if a road were to be placed on the north side of the property, the grade difference between Mr. Alberts piece and the property to the north would make things difficult from a retaining standpoint. The design from a planning standpoint is

preferred where shown by the applicant.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval.

Mr. Whetstone seconded the motion.

Discussion: Mr. Spendlove stated that the property is landlocked and seems to have a difficult hardship. He indicated that approval would also allow the outbuilding to come into compliance.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

Motion Carries - B-4-2015– Unanimous Vote

OTHER

The minutes from **August 6, 2014** were **approved**.

There being no further business the meeting adjourned at 7:19 p.m.

Nichole Camac, Administrative Assistant